

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)
Application of Daufuskie Island Utility Company, Inc.)
For Approval of a New Schedule of Rates and)
Charges for Water and Sewer Service)

DIUC’S PETITION FOR RECONSIDERATION
OF ORDER ON REHEARING

This Commission’s Order on Rehearing entered January 31, 2018, addressed many of the complex issues presented in this case and significantly reduced the outstanding questions. However, the Order on Rehearing’s analysis of rate base/utility plant in service, accumulated depreciation/depreciation expense, and rate case expense requires additional refinement. The Commission’s disallowance of specifically identified, used and useful assets in rate base/utility plant in service, its disallowance of certain expenses in accumulated depreciation/depreciation expense, and its disallowance of significant rate case expense are not based upon the reliable, probative, and substantial evidence in the record. Additionally, these rulings are contrary to the evidence and result in a punitive impact upon DIUC. Therefore, pursuant to SC Code § 58-5-330, DIUC requests this Commission reconsider its Order on Rehearing and substitute DIUC’s Proposed Order on Remand submitted December 15, 2017, to replace the Commission’s Order in its entirety. Alternatively, the Commission should revise its Order on Rehearing to adjust the rate base for the disallowed assets and corrected accumulated depreciation, and adjust depreciation expense and a sufficient portion of the rate case expenses in order to achieve DIUC’s original 108.9% rate increase.

1. RATE BASE / UTILITY PLANT IN SERVICE

Repeating the same error that resulted in appeal of Order 2015-846, the Order on Rehearing adopts the ORS recommendation to exclude \$699,361 worth of DIUC's gross plant from rate base. The Order on Rehearing describes the excluded \$699,361 as "gross plant in service representing non-allowable plant, adjustments from the previous case not carried forward by DIUC in its Application, and asset retirements." Order on Rehearing at 26. However, the Order on Rehearing cites no testimony to justify this adjustment and purported finding; instead, the Order on Rehearing merely references ORS Audit Exhibit DFS-5 (Rehearing Exhibit 8) then repeats ORS's inaccurate assertion that Rehearing Exhibit 8 "shows the specific items composing the \$699,361." Order on Rehearing at 26.

The reason the Order on Rehearing cites to no testimony from ORS in support of the \$699,361 exclusion is because there was no testimony from ORS in the first hearing or the second hearing to support of the \$699,361 exclusion. Regarding the DIUC plant, ORS witness Daniel Sullivan only stated that after he corrected ORS's previous exclusion of the Elevated Tank Site and related facilities, "ORS now computes an adjustment to gross plant in service of (\$699,361) which is shown on Rehearing Audit Exhibit DFS-5." Rehearing Transcript at 451. At rehearing ORS did not provide any additional support for this adjustment of \$699,361; instead, ORS relies solely on the previous testimony of Ivana C. Gearheart at the initial hearing and the updated Exhibit DFS-5 which merely copied over Gearheart's conclusions. *See* Rehearing Transcript at 451 and Rehearing Exhibit 8 at DFS-5.

A. ORS never identified the specific items of plant alleged to support the \$699,631 adjustment.

First, it must be made clear that neither Ms. Gearheart's Exhibit ICG-5 (Hearing Exhibit 18) nor Mr. Sullivan's Revised Rehearing Audit Exhibit DFS-5 (Rehearing Exhibit 8) identifies

the specific items that are tallied to reach the \$699,631 adjustment. Those exhibits only list primary plant accounts; they do not identify items of plant. The ORS adjustments by plant account cannot be identified by or matched with specific items of plant, the specific cost of the items being adjusted is not provided, and there is no information about ORS's reasons for the adjustments. The excluded amount of \$699,631 was simply repeated by reference to previous ORS witness Ivana Gearheart's exhibits and a review of Ms. Gearheart's testimony clearly reveals that Ms. Gearheart failed to itemize the specific assets or costs that are the basis of ORS's proposed adjustment of \$699,361 to utility plant in service. *See* Hearing Exhibit 18.

ORS failed to provide the Commission with the required reliable, probative, and substantial evidence on the whole record necessary to justify the adjustment. Rather, this finding and corresponding adjustment are based on impermissible conjecture and speculation. The Commission should revise its Order on Rehearing to reflect the absence of evidence necessary to support the adjustment.

B. ORS's adjustment for the absence of contemporaneous documentation of costs is not supported by the evidence or by application of NARUC principles.

ORS premised a portion of its total adjustments to utility plant on the alleged absence of specific contemporaneous documentation of the precise cost of construction of facilities. It is undisputed, however, these facilities are used and owned by DIUC. Mr. Guastella testified, however, that the absence of those invoices does not constitute a lack of documentation of cost for ratemaking when there is no question the facilities are in service, used and usable, as is the case here. *See* Hearing Transcript at 150-152. The record establishes, via Mr. Guastella's explanation, that DIUC provided ORS with itemized assets, by primary plant account, description of original costs as booked, year of installation and in-service dates. *See* Hearing Transcript at 150-153. Further, it is undisputed these assets are real and in service and DIUC is paying utility property

taxes on them. Finally, Mr. Guastella also testified at the hearing it was the now defunct Melrose Utility Company that failed to retain many of the invoices now sought by ORS to review past transactions. *Id.*

As DIUC pointed out in the primary case, ORS witness Gearheart's proposed adjustments for land, capital costs and other unspecified assets in various accounts but she failed to provide any evidence to support her adjustments; Ms. Gearhart merely attached descriptive words like "non-allowable," "adjustments from the previous case," or "undocumented." Ms. Gearheart did not provide any other testimony or analyses to support her adjustments. The Commission cannot determine from Audit Exhibit ICG-5 or the entire record as a whole what items of plant were adjusted for "non-allowable plant" or what costs were adjusted for "non-allowable plant." *See* Hearing Exhibit 18. Moreover, merely stating that an item of plant is non-allowable is not justification as to why it is not allowable and it is certainly not sufficient evidence to support inclusion of the adjustment in the Order on Rehearing.

In his rebuttal testimony, Mr. Guastella explained the basis for and justification of the costs included in the \$699,361 of hard assets in service that ORS recommended be disallowed.

With respect to Ms. Gearheart's claim that costs were "undocumented," Mr. Guastella testified:

In fact, itemized costs at specific amounts, by primary plant account and the year in service, are recorded on the DIUC's books, which certainly constitute "documentation". The ORS does not claim that the assets in question do not exist and are not used and useful, nor does it question the reasonableness of the amounts that it clearly observed from DIUC's records. Some missing invoices for a relative small portion of plant, particularly for the Melrose Utility Company that essentially abandoned its system, does not constitute an absence of evidence of the reasonable of the utility plant costs for assets that are providing service. Even the Intervenor's expert, Mr. Loy, understands such circumstances.

Hearing Transcript at 203 to 204.

Mr. Guastella also explained the proper and NARUC-endorsed role of estimating costs and using estimation studies.

These studies are typically performed when there are no supporting cost records of plant. The NARUC USoA requires an 'estimate' of plant values when there is no supporting documentation available. Original cost studies have been an accepted methodology to establish these values.

Although Mr. Loy applies that statement to his opinion with respect to an issue he raised with which I disagree and will discuss later, he is correct that the cost of plant is not properly disallowed because of a lack of documentation, but instead it is proper and consistent with the NARUC USoA to use estimates. In this case, however, it is not necessary to estimate the costs because the costs are known and recorded, and the assets are used and useful in providing service to our customers.

Hearing Transcript at 204.

The POAs' expert Mr. Loy agreed with DIUC's approach to estimate the plant values, testifying:

These studies are typically performed when there are no supporting cost records of plant. The NARUC USoA requires an 'estimate' of plant values when there is no supporting documentation available. Original cost studies have been an accepted methodology to establish these values.

Hearing Transcript at 202-203.

When asked on cross-examination about this estimating procedure, Ms. Gearheart testified that she was not aware of that provision in the NARUC USoA. *See* Hearing Transcript at 530.

Mr. Guastella's testimony on these issues was not refuted by any surrebuttal testimony in the primary case and Mr. Loy's agreement with the DIUC estimations also remains unchanged. None of ORS's or Intervenor's witnesses in the rehearing have added to Ms. Gearheart's testimony regarding her proposed exclusion of \$699,361 of utility plant in service. ORS witness Sullivan merely adopted Gearheart's unsupported conclusions; he did not provide any additional evidence. At rehearing no one for ORS or Intervenor addressed Mr. Guastella's rebuttal testimony in the

primary case regarding these adjustments. As such, the record does not support the adjustment reflected in the Order on Rehearing.

The alleged lack of invoices does not constitute reliable, probative, and substantial evidence to disallow in their entirety the value of a utility's assets that are in place providing service. ORS should have estimated the reasonableness of the costs recorded and booked rather than excluding an unspecified amount for alleged "undocumented expenses," which implies some inappropriate action by DIUC. The Commission's finding that the absence of invoices is equivalent to a total absence of documentation of the cost of these particular assets that are unquestionably in service is unsupported by substantial evidence.

C. ORS failed to support its adjustment to exclude capital costs and legal costs associated with plant in service.

The record does not include any ORS testimony in support of excluding capital costs and legal costs associated with plant in service (i.e., the "Land and Land Rights" as shown in Exhibit DFS-5). Therefore, the Order on Rehearing's inclusion of the adjustment is not based on the evidence in the record which is Mr. Guastella's testimony about specific costs that are properly included in those categories. That testimony is included in the following exchange:

Q. What adjustments did the ORS propose with respect to legal and consulting fees that are reflected in DIUC's utility plant in service?

A. Ms. Gearheart's testimony and exhibits do not specifically identify the amounts of those adjustments. They are lumped in with her adjustment to utility plant in service. It is our understanding that she proposes to eliminate the legal fees incurred in connection with the condemnation of the Sabry parcel and to eliminate GA consulting fees that were capitalized. I would note that Ms. Gearheart's statement that the legal costs of \$29,511 were for condemnation of the water tower is incorrect. DIUC is condemning the land, not the water tank that DIUC already owns.

Q. Why was the condemnation action required?

A. When we learned of the tax sale of the storage tank parcel, our first reaction was to reason with Mr. Sabry. When that was unsuccessful, we filed a legal action to reverse the tax sale. Subsequently, however, our attempt to finance with CoBank and then Wells Fargo fell through, and our need to obtain financing for capital improvements had to be our primary objective. It became evident that the proceeding to reverse the tax sale would be drawn out and result in an unacceptable delay in obtaining a loan. The best course of action was to withdraw the law suit and initiate a condemnation, an action that SunTrust would accept -- and made it a requirement of the loan.

Q. Why should the legal fees be included in the cost of providing service?

A. The tax sale was beyond our control. Upon managing DIUC, we notified Beaufort County of the new address, and we received regular property tax bill from Beaufort County at that address. For an unknown reason, Beaufort County sent a tax bill for the storage tank parcel of land to the wrong address without our knowledge, as well as notices of a delinquency and a tax sale. It even posted a notice of the tax sale at the wrong property, and our operators never observed any notice at the storage tank site which they visit daily. The legal fees were, therefore, unavoidable and included in the cost of land.

Q. Why should GA's fees related to capital improvements be included in the cost of providing service?

A. GA's management agreement contain a provision under which work performed in connection with capital improvements is not part of the routine day-to-day management of DIUC and, therefore, would be billed at 10% of the first \$50,000 of improvements and 8% of capital costs over \$50,000. The work involves establishing the improvements that are needed or desirable, establish priorities in terms of their impact on service and available funding cost, solicit and obtain contractors' proposals, select contractors, schedule and coordinate work with DIUC's routine operations, and supervise the construction work.

Q. Did ORS provide any reason for eliminating GA's fees related to capital improvements?

A. Not that I could find.

Q. Why should GA's fees related to capital improvement be included in rate base as part of the cost of the improvements to utility plant is service?

A. GA's capital fees are not only part of an arms-length management agreement, they are necessary and the cost is reasonable. It is obvious that capital improvements cannot be made without the work I describe above. The 10% and mostly 8% of the construction costs are significantly less that the 15% to 20% typically allowed for administration and supervision of construction work."

Hearing Transcript at 204-206.

ORS and Intervenors have not provided any evidence to refute the testimony in the record regarding these costs. The evidence supports only one conclusion -- these costs were incurred by DIUC in the course of managing its property and securing the improvements necessary for providing safe and adequate service to its customers. As such, the Order on Rehearing must allow recovery of these expenses. See Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 107 n.8, 708 S.E.2d 755, 761 (2011) citing Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of W. Va., 262 U.S. 679, 690, 43 S. Ct. 675, 67 L. Ed. 1176 (1923) (explaining that where the rates charged by a public utility company "are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service . . . their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment").

The Commission should revise the Order on Rehearing. The reliable, probative evidence in the record does not provide a basis to support adoption of the ORS adjustment of \$699,361 to plant in service. ORS failed to properly identify the items it sought to exclude, ORS failed to refute the ample testimony that DIUC employed proper NARUC principles in estimating certain costs, and ORS did not provide any supported reason why properly incurred capital costs and legal costs associated with plant in service should not be recovered. The complete amount of Utility Plant in Service of \$3,949,956 for water and \$4,189,304 for sewer, or a total of \$8,139,260, as requested by the Application, should be included in the allowance for Utility Plant in Service.¹

¹ DIUC's appeal to the Supreme Court included this issue which is among the "multiple" adjustments in the ORS/POA Settlement Agreement that the Court found were unsupported by any evidence presented to the Commission.

2. ACCUMULATED DEPRECIATION AND DEPRECIATION EXPENSE

DIUC witness Gary White's direct rehearing testimony presented DIUC's rate analysis and supporting schedules in Exhibit GCW-R1, which includes proposed accumulated depreciation in the amount of \$429,396 for water and \$348,458 for sewer, and depreciation expense of \$42,120 for water and \$ 53,420 for sewer, net of the annual amortization of CIAC. Mr. White's prefiled rehearing rebuttal testimony addressed ORS witness Sullivan's depreciation amounts for both accumulated depreciation and depreciation expense, pointing out several inconsistencies in the ORS testimony. *See* Rehearing Transcript at 126 to 130. In that testimony, Mr. White observed that Mr. Sullivan's depreciation schedules are in conflict with DIUC's book figures, there are no known and measurable changes after December 31, 2014, and his roll forwards are not consistent with ORS's position in the 2011 rate case as to plant in service, accumulated depreciation and average service lives. *Id.* Mr. White also provided a detailed roll forward of depreciation expense and accumulated depreciation in Exhibit GCW-R2.

In his surrebuttal testimony, Mr. Sullivan states that he focused on the issues from the Supreme Court decision and given the limited time in this rehearing process, he did not undertake further reviews of DIUC's books and records, the ORS position in the 2011 rate case, or the positions reflected in Ms. Gearheart's work in this docket. Rehearing Transcript at 459. So, Mr. Sullivan's testimony does not constitute substantial evidence for rejecting Mr. White's depreciation recommendations. ORS has provided nothing to contradict Mr. White's analysis. Further, Mr. White provided Exhibit GCW-R2 (Rehearing Exhibit 3) and specifically testified that "DIUC's calculation of accumulated depreciation has been consistent; it reflects proper regulatory accounting; and it makes the appropriate known and measurable adjustments." Rehearing Transcript at 130.

The Commission should reconsider its Order and accept the detailed depreciation analysis provided by Mr. White.

3. RATE CASE EXPENSE

The Order on Rehearing's allowance of only \$272,382 for rate case expense is not supported by the reliable, probative, and substantial evidence on the whole record. As is explained in the following discussion, the rate case expense adopted by the Order improperly and summarily excludes \$542,978 of Guastella Associates ("GA") billings, based solely upon ORS's last-minute attempts to manufacture a multitude of brand new complaints about the invoices submitted by DIUC to document the costs for services provided by GA to DIUC in furtherance of this rate proceeding which has involved over three years of litigation and appeals.

A. The Order on Rehearing improperly applied the Supreme Court's decision and erroneously relied upon the initial ORS recommendation as to rate case expense

The Order on Rehearing's discussion of DIUC's need to collect the expense incurred through the multiple rate proceedings and appeal in this matter begins with the following erroneous assertion:

Rate case expenses were not specifically mentioned in South Carolina Supreme Court Decision No. 27729, however, in keeping with the Court's Opinion, DIUC introduced new evidence that altered its original Rate Case expense request. As a result, this issue was litigated at the rehearing.

Order on Rehearing at 36, FN#33.

The issue of DIUC's entitlement to recover its rate case expense was not litigated at rehearing simply because DIUC introduced new evidence. Instead, the Supreme Court's decision specifically instructed the Commission to address rate case expense, holding:

[T]he Settlement Agreement [adopted by the Commission] did not resolve any issues between the parties, but rather was merely an agreement between the POAs and ORS not to object to one another's pre-filed testimony, and to accept ORS's recommendations and adjustments should the Commission adopt them.

Furthermore, **the Settlement Agreement contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission.** Therefore, we hold that Commission erred in approving and adopting the Settlement Agreement and DIUC is entitled to a new hearing in which the parties may present any additional evidence. **While we are reversing and remanding for a new hearing as to all issues, in order to provide guidance to the Commission on remand, we address three allegations of error raised by DIUC in this appeal.**

Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff, 420 S.C. 305, 316, 803 S.E.2d 280, 286 (2017) (emphasis added).

As Mr. Guastella explained in his rehearing testimony, it is DIUC's position that in reversing Commission Order 2015-846 in its entirety, the Supreme Court found that there was no evidence to support any of the adjustments reflected in the ORS/POA Settlement Agreement as adopted by the Commission. *See* Rehearing Transcript at 66 and Applicant's Proposal for Procedure Following Remand and Expedited Hearing, Docket Entry 272433. The Commission should have considered the rate case expense issues on remand based on the Supreme Court's ruling that the previous rate case expense adjustment was "entirely unsupported by the evidence presented to the Commission [at the original hearing]." *Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff*, 420 S.C. 305, 316, 803 S.E.2d 280, 286 (2017).

By failing to properly apply the Supreme Court's findings as to rate case expense, the Commission did not require ORS to provide support for its previous position that adjustment of rate case expenses in the original proceeding down to only \$97,500, of which \$75,000 was allocated for the current rate case and \$22,500 for the unamortized balance related to the last rate case. The Supreme Court found ORS's estimated amount of \$97,500 amount to be wholly unsupported and the Commission errs in disregarding this ruling. Further, the Order on Rehearing compounds this issue when it begins its rate case expense analysis by stating in Footnote 34 on page 36 of the Order that the \$75,000 figure was "arrived at during the ORS and POAs." That is

not accurate. The \$75,000 was provided by ORS witness Gearheart and is what Ms. Gearheart determined should be “allowed” for “GA’s preparation of the Application, developing rate models, calculating test year data, filing other rate case documents and legal expenses.” Hearing Transcript at 495. Ms. Gearheart and ORS did not support that amount with any specific evidence. The

When challenged on appeal, ORS took the position that it did not have to support its recommendation with any facts:

S.C. Code Ann § 58-4-50(A)(1) requires nothing further than a recommendation. Inherent in ORS's recommendation is its expertise and experience as the sole regulatory agency in South Carolina with the duty of examining utilities along with its knowledge of the case. [...] ORS recommended rate case expenses which it deemed reasonable and in the public interest.

Final Brief of Respondent South Carolina Office of Regulatory Staff, Appellate Case No. 2016-000652 at 19. Notably, in the original hearing ORS never raised issues about the GA invoices submitted by DIUC in support of its rate case expense. In fact, it is not ORS’s position that it has provided any evidence in this case that the bills are insufficient – ORS simply states it “cannot recommend them in an amount to be covered.” Rehearing Transcript at 510 (Ms. Hipp testifying “Whether or not ORS is penalizing them, ORS cannot verify these and, as such, cannot recommend them in the amount to be recovered.”)

The Supreme Court ruled this ORS analysis from the original testimony and the ORS-POA Settlement Agreement was unsupported and the Commission erred in relying upon it as the basis of its rate case expense adjustment in Order 2015-846. Because no further evidence on the \$75,000 amount was provided by ORS at rehearing, the Commission’s reliance on that amount in the Order on Rehearing likewise creates a ruling based upon unsupported evidence.

B. DIUC was not afforded its lawful right to rebut the alleged evidence presented by ORS in opposition to DIUC’s request to include GA rate case expenses in its rates.

The Order on Rehearing adopts the ORS position that DIUC's costs for work performed by GA should be completely disregarded because of the invoices from GA. The primary support for this testimony came from ORS witness Dawn Hipp who testified at rehearing that the GA invoices provided for rate case expense:

... contain mathematical errors; do not contain sufficient detail to describe the work performed, the specific dates and hours of work, employee name, and business purpose; contain expenses such as air fare, lodging, and meals for which no detail or receipt was provided; and, do not appear to be paid by DIUC.

Rehearing Transcript at 476.

However, prior to the filing of ORS surrebuttal rehearing testimony, there was never any testimony in this case about ORS concerns or complaints as to the format of GA invoices or that it was discussed with DIUC. *See* Rehearing Transcript at 500 (Ms. Hipp testifying ORS complaints about the GA invoices were not raised in testimony in this case until she did so to refute DIUC's assertion that ORS has unfairly raised this issue so late in the case at rehearing).

The late timing of this new reason to exclude \$542,978 of rate case expense was improper and unfair. DIUC did not have ample time to respond to or address the complaints raised by ORS. As the Supreme Court has explained, "Consistent with its obligation to provide Utility an opportunity to achieve a reasonable return, the PSC was obligated to accord Utility a meaningful opportunity to rebut the evidence presented in opposition to its proposed rates." *Utilities Services of S.C., Inc. v. S.C. Off. of Reg. Staff*, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011) citing 26 S.C.Code Ann. Regs. 103–845(C).

Disallowing the \$542,978 also rewards ORS for not previously raising the issue or providing DIUC a fair opportunity to respond in the usual manner allowed by ORS. Specifically, ORS admits it did not allow DIUC to provide additional information about the rejected \$542,978 but that ORS usually engages an applicant to allow additional information to be provided in

response to ORS questions about verification of charges or invoices. Ms. Hipp explained how DIUC was treated differently which resulted in the exclusion of every single rate case expense invoice from GA:

In the case of this rehearing, the invoices that we received came to us, and we had such a short time period in order to examine them and make decisions, to meet the deadlines that the Applicant had asked for, that there wasn't that give-and-take. But in a normal rate case, we do have the luxury of having several months to go back and forth with the company, to make sure we thoroughly understand the expenditures for which they're seeking recovery.

Rehearing Transcript at 520.

By adopting the ORS position in its Order on Rehearing, the Commission denied DIUC ample opportunity to respond as well as an opportunity to respond in the manner that ORS usually allows; as such, DIUC was not able to rebut the alleged evidence presented by ORS in opposition to its proposed rates.

While DIUC appreciates that the Order on Rehearing permits DIUC an opportunity to support the \$542,978 of requested rate case expenses in a future rate proceeding, not allowing DIUC to recover any GA charges in this case, not even a modest amount that has been clearly supported by evidence, is contrary to the basic standards of cost recovery and rate setting principles. Furthermore, deferral improperly requires DIUC to bear the burden of carrying these costs beyond a reasonable period of time resulting in a punitive impact on DIUC.

C. The Order on Rehearing improperly excludes \$542,978 of Guastella Associates billings from rate case expense.

Before addressing the specifics of the ORS position regarding rate case expenses and the Order's adoption of the same, it is important to pause and acknowledge just how much work has been required for DIUC to push through these proceedings which began over three years ago. First, in the original proceeding DIUC was required to respond to discovery and to comply with

information requests equal to those required of large utilities, which resulted in disproportionate expenses for a small utility like DIUC and significant amounts of time from GA personnel to conduct these activities. *See* Hearing Transcript at 218. Additionally, after a full hearing on its application, DIUC was forced to incur the additional high costs associated with a complicated request for reconsideration and a lengthy appeal to the South Carolina Supreme Court. Following remand, DIUC requested a very limited proceeding, but the POAs and ORS disagreed so DIUC was again required to rely upon the expert assistance of GA personnel to participate in broad discovery, prepare testimony, and then litigate a full rehearing. Denying DIUC any recovery now for the GA rate case expenses incurred through this multi-year proceeding is unjustifiably punitive. Even if the Commission is inclined to defer some costs for a later rate case or for additional paperwork or for more detailed information, there is ample evidence in this record justifying recovery of a significant amount of GA's rate case charges.

The Order's adoption of the ORS position has resulted in an extreme ruling that unnecessarily punishes DIUC. ORS is certainly aware, as is the Commission, that GA provided DIUC with services including answering a significant number of discovery responses (all of which were verified for DIUC in this case by GA employee John Guastella), preparing prefiled testimony by GA employees Guastella and White, traveling to the original hearing to provide live testimony by GA employees Guastella and White, preparing prefiled rehearing testimony by GA employees Guastella and White, preparation for rehearing live testimony by GA employees Guastella and White, and attendance at the rehearing by both Mr. Guastella and Mr. White.

ORS witness Dawn Hipp testified that there were five criteria employed by ORS to ensure the DIUC invoices and supporting documentation:

- 1) The invoice is mathematically correct;
- 2) The invoice is for a valid business purpose;

- 3) The expense was incurred during the period under review;
- 4) The invoice was properly recorded on the books and records of the Company; and
- 5) The invoice was paid by the Company.

Rehearing Transcript at 474.²

With respect to the mathematically correct invoices error, Ms. Hipp refers to GA invoice #133 (Rehearing Exhibit 10) that lists a rate for Principal as \$35 instead of the rate of \$345 to \$375 that appears on other invoices. That invoice, the only one with a mathematical error, is dated 7/10/2014 and in the amount of \$1,612.50. Indeed, the \$35 rate should have been \$345, but this clerical error resulted in a charge that was actually less than it should have been.

In response to a question by Commissioner Nelson regarding whether GA bills had been paid and whether that was the main issue, Ms. Hipp testified "...that is one of the issues. I wouldn't consider it main. They are all weighted the same." Rehearing Transcript at 532-533. That means that ORS considers all five of these criteria equally. It is beyond any reasonable ratemaking standard in which to establish the cost of providing service that clerical billing errors, in this case on one bill, would be 20% of ORS's reason to recommend eliminating \$542,978 of charges incurred by DIUC.

With respect to a valid business purpose, GA charges to DIUC for rate case work certainly meet that standard. In this context, Ms. Hipp testified that because GA's management of DIUC presents challenges in verifying where the work performed by GA under that management agreement ends and where the work performed to support the rate case and appeal begins, ORS concluded that ORS cannot verify that DIUC's characterization of the efforts GA undertook to "...complete discovery, try the case, and then file an appeal..." is accurate. Rehearing Transcript

² Also, the Commission must reconsider this analysis in light of DIUC's assertion that ORS for the first time raised these issues just days before the hearing on remand, more than three years after the initiation of this rate proceeding.

at 484. However, to identify the different tasks covered under each role that GA provides for DIUC, ORS merely needed to read the detailed scope of services GA is required to perform, as set forth in its management agreement with DIUC and compare them to the detailed descriptions of work performed for the rate case as set forth in Ms. Hipp's own exhibit under the column entitled "DIUC Invoice Descriptions." *See* Rehearing Exhibit 10.

With respect to whether the rate case expenses were incurred during the period under review, there is simply no question that the rate case expenses for GA services were incurred during the period under review. Exhibit JFG-R3 (Hearing Exhibit 1) specifically itemizes GA's monthly billings for the periods from June 2014 through September 2017, including dates, and the actual dated invoices were also provided.

With respect to recording invoices on DIUC's books and records, long before the rehearing DIUC provided ORS with copies of DIUC's trial balances for 5 years, general ledger, tax returns and trial balances tied to rate application schedules. ORS also performed an audit and requested similar information which DIUC supplied in response to ORS Information Requests 1.13, 1.14, 1.17 and 1.20. Finally, there was no testimony that the GA billings were not properly recorded on DIUC's books.

With respect to payment of invoices, the allowance of costs incurred by a utility does not depend on whether a bill has been paid or reflected on the books as an account payable; if a reasonable cost is incurred then it qualifies for rate setting purposes. As Mr. Guastella testified, the owners have never taken a dividend and significant amounts owed by DIUC to GA have remained as accounts payable because the DIUC accounting priority has always been to use available cash for providing service to the customers. *See* Rehearing Transcript at 78 (Mr. Guastella testifying, "not only has there never been a dividend paid to any owner since the

inception of the DIUC (formerly Haig Point Utility Company), but the existing owners have had to repeatedly infuse significant amounts of capital into DIUC to pay for operational costs during the appeal and before.”). Finally, a requirement of payment of invoices is not a standard for “known and measurable” or any other rate setting standard.

In addition to these five criteria, Ms. Hipp also made certain assertions that, upon reconsideration, clearly do not support the conclusions asserted. With respect to the detail shown in GA invoices, Mr. Guastella testified that GA’s invoices for rate case work have been the same for other clients, including Kiawah Island Utilities, Inc., and that only in this rehearing did ORS raise the question of the detail reflected in GA’s invoices, never in the primary case or any other case. Rehearing Transcript at 88. In response, Ms. Hipp testified that ORS received five (5) invoices prior to its cutoff date of August 11, 2015, for review of the application materials. She further testified that ORS hosted a conference on August 24, 2015, during which time the GA invoices were discussed with DIUC representatives as part of the ORS explanation for its first reduction of rate case expenses to an allowance of only \$75,000. Ms. Hipp provided no documentation in support of her response and the assertion is not logical. If ORS had, in fact, indicated in August of 2015 that its allowance of rate case expenses depended on the detail it now claims is necessary, there would be no reason for DIUC not to provide extensive details by revising past bills and including similar content on all future bills. The fact of the matter is, however, that GA’s bills provide enough detail to establish the reasonableness of the charges for rate case work.³

Ms. Hipp does not deny that ORS reviewed and approved GA’s bills to Kiawah Island Utility, Inc. in its rate cases. Instead, she claims that such a comparison is not warranted because,

³ GA’s extensive work is also highlighted in the legal bills that document in this rate proceeding that DIUC’s attorneys communicated with GA on 423 occasions for some 139 hours attributable to those occasions.

as she asserts for the first time, the GA-DIUC relationship is not an “arms-length transaction” thereby requiring “a careful review by ORS.” Rehearing Transcript at 487. Not only are these criticisms brand new at the final hour of rehearing in this matter, the claims are conjecture. GA is not an affiliate of DIUC or its stockholder and owners. GA’s services are provided to DIUC in accordance with a management agreement that includes the provision of rate case consulting services separate from the management scope of work. In fact, in response to ORS Audit Request 1-14, DIUC provided over 150 emails to the president of DIUC and its owners, addressing all aspects of DIUC’s operations, including the filing of the rate application, as well as financial statements, tax returns, PSC and court decisions, and other major matters. It is illogical to think that the president and owners of DIUC are somehow unaware of the rate case expenses or that these communications can simply be disregarded. DIUC and its owners are in constant communication with GA personnel; the suggestion that somehow GA is or might be inappropriately approving or making payments to itself borders on slander.

Following are responses to the other complaints raised by ORS in Rehearing Exhibit 10 with regard to GA invoices. The critiques do not advance the analysis of what is included in the billed rate work and whether it was performed. However, the issues raised and responses do demonstrate the extent to which ORS has gone to make excuses for disallowing \$542,978 of GA billings:

- No contractor name – All bills are on Guastella Associates, LLC letterhead.
- No start date – As shown in Exhibit JFG-R3, GA bills are rendered monthly, showing the period ending on the last day of the month so the start date would be the first of the month.
- The name of the employee not listed – Each of the invoices from GA include time entries identified by the title of the personnel billing the time. A few early invoices refer to: “Principal” and to “Director-Financial/Accounting” while the later invoices identify the billers as “President” and “Vice President–

Financial/Accounting.” *See* Rehearing Exhibit DMH-1. These titles are sufficient to identify Mr. Guastella and Mr. White, both of whom have testified before this Commission and provided their job descriptions and titles to this Commission. *See* Hearing Transcript at 134 (John Guastella testifying he is President of Guastella Associates) and Hearing Transcript at 119, 123 (Mr. White testifying “I am Vice President and the Director of Accounting with Guastella Associates, LLC a firm that provides utility consulting services primarily for municipal and investor-owned water and wastewater utilities.”). Both gentlemen have appeared before this Commission twice in this case to provide expert testimony on behalf of the Applicant. The name and title of each GA staff person was also provided in response to ORS discovery request ORS 1.2.

- No specific dates and times listed for each employee – The specific dates worked by each employee are not shown. GA bills do, however, list the number of hours worked and hourly rates by each employee. It should be kept in mind that DIUC is the regulated utility, not GA. If DIUC’s officer and owners accept GA’s billing because they know the work product and effort made by GA, just as all of GA’s other clients have over the years, then ORS’s disallowance of all \$542,978 of GA charges fails to recognize the actual cost of the rate setting process.
- ORS cannot verify if rates charged by GA to DIUC for rate case expenses are accurate – This is simply not true. ORS could have verified the rates charged by GA by simply referring to DIUC’s books for the entries of the GA charges. Another way would be to ask for GA’s typical schedule of hourly rates that it charges all of its clients. Given the extensive discovery exchanged long before ORS raised this issue, it is unfair for ORS to suddenly claim it was without opportunity or information regarding verification.

ORS also raised questions about GA’s documentation for travel costs. Ms. Hipp’s begins this line of analysis by citing to some unidentified rate case(s) where “ORS’s review of travel expenses has found situations where regulated utilities incurred lavish expenditures related to employee travel (i.e. private jets, \$50 alcoholic drinks) and included those lavish expenditures in a rate application.” Rehearing Transcript at 488. There are only a few GA bills for travel expenses and they total \$5,634, including the \$4,532 for the cost of three GA employees to appear in Columbia for the first rate hearing. Knowing the date of the hearing and the GA personnel in attendance, it seems logical that ORS professionals could evaluate the reasonableness of those travel expenses as reflected on the invoices billed to DIUC. There is no cause to believe that

\$5,634 in total travel costs over a three-year rate case in any way involve the kind of extravagances ORS witness Hipp purports to prevent. There is no reason to doubt these travel expenses.

As previously noted, ORS has required DIUC to supply many discovery responses and has had more than ample time to request additional information. It is not fair to delay DIUC's ability to recoup its costs because ORS waited to surprise DIUC with this "gotcha" position at rehearing. Additionally, ORS admits it did not allow DIUC to provide additional information about the rejected \$542,978 but that ORS usually engages an applicant to allow additional information to be provided in response to ORS questions about verification of charges or invoices. Ms. Hipp explained how DIUC was treated differently, which resulted in the exclusion of every single rate case expense invoice from GA:

In the case of this rehearing, the invoices that we received came to us, and we had such a short time period in order to examine them and make decisions, to meet the deadlines that the Applicant had asked for, that there wasn't that give-and-take. But in a normal rate case, we do have the luxury of having several months to go back and forth with the company, to make sure we thoroughly understand the expenditures for which they're seeking recovery.

Rehearing Transcript at 520.

The ORS criticisms of the invoices in no way negate the work performed by GA. There is no testimony in the record that the extensive rate case work was not performed by GA or that it was unnecessary. Changing invoices to include names of employees instead of titles or correcting a single clerical error on a bill from \$35 to \$345 or recording a cost as a payable instead of a current payments, does not change the validity of or the quantity of work demonstrated by the GA billings submitted as rate case expenses. The reliable, probative, and substantial evidence demonstrates the significant amount of work performed by GA for DIUC in these rate proceedings and the Commission should allow DIUC to recover the costs for at least one-half of the rate case work performed by GA.

CONCLUSION

The Rate Application that initiated this proceeding requested a 108.9% increase over the rates authorized pursuant to the last petition for rate adjustment. *See* Rehearing Transcript at 80. After appeal and remand to the Commission, DIUC provided testimony that the “current economic realities following remand” require DIUC obtain “a 125.7% increase over the rates authorized pursuant to the last petition for rate adjustment.” *Id.* at 79. However, to keep the final rates within the Application’s original 108.9% increase, DIUC proposed to leave outstanding that portion of its rate case expenses beyond those that could be included within a 108.9% increase. *See* DIUC’s Proposed Order, Docket Entry 273556.

Following that same logic, DIUC hereby requests the Commission reconsider the Order on Rehearing and enter an amended order including the \$699,361 of utility plant in service and revising the depreciation as set forth herein. The Schedule attached hereto as *Exhibit 1* should form the basis of an amended order. As demonstrated by the Schedule, the resulting revenue requirement would be \$2,243,072.

The Order on Rehearing allowed \$272,382 for rate case expense incurred through September 30, 2017. DIUC requests the Commission reconsider and increase the allowed rate case expense so that DIUC can recover \$269,356 for GA fees incurred through September 30, 2017. Using a 3-year amortization and limiting the total rate increase to the original 108.9%, the Commission should allow \$541,738 for total rate case expenses over three years collected annually at \$180,579. *See Exhibit 1.* That would leave outstanding about one-half of the \$541,738 of GA fees invoiced through September 30, 2017, or \$273,662.

DIUC would support the Commission not ruling on or offering any decision on those outstanding pre-September 30, 2017, GA costs or their documentation at this time. The \$273,662

would be carried over to the next rate proceeding during which ORS should engage in its usual and customary “back and forth with the company, to make sure [ORS] thoroughly understand[s] the expenditures for which [DIUC is] seeking recovery.” *See* Rehearing Transcript at 520. At that time DIUC would also present its additional post-September 30, 2017, actual rate case expense for the conclusion of this docket to enable an accurate accounting of what additional costs should be considered in the rate case.

Respectfully submitted,

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February 20, 2018

Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on February 20, 2018, I caused to be served upon the counsel of record named below a copy of the foregoing **DIUC'S PETITION FOR RECONSIDERATION OF ORDER ON REHEARING**, by electronic mail, as indicated.

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